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17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA

19 VPN.COM LLC,
20 *Plaintiff,*
21 vs.
22 GEORGE DIKIAN et al.
Defendants.

CASE NO. 2:22-cv-04453-AB-MAR

[Assigned to Judge Andre Birotte Jr.]

JOINT RULE 26(f) REPORT

Scheduling Conference:

Date: February 10, 2023
Time: 10:00 a.m.
Crtrm: 7B

23 Pursuant to Fed. R. Civ. P. 26(f) and Local Rule 26-1, Plaintiff VPN.COM
24 LLC (“VPN”), and Defendant GEORGE DIKIAN (“Dikian”), through their
25 respective counsel, jointly submit this Rule 26(f) Report following the conference
26 of counsel required by Rule 26(f) of the Federal Rules of Civil Procedure and
27 Central District Local Rule 26-1.
28

1 **A. JOINT STATEMENT OF THE CASE**

2 **VPN's Statement:**

3 VPN was the victim of a massive fraud orchestrated by Dikian that spanned
4 several months. Dikian ultimately lured VPN into sending Dikian's enterprise
5 \$250,000 as part of what turned out to be two completely fraudulent domain name
6 sale transactions that VPN had thought it was brokering for Dikian.

7 As the linchpins of the fraud, the enterprise used, inter alia, (i) the reputation
8 of Dikian, a well-known domain name investor and reseller; (ii) the known email
9 address of Dikian that was and is connected to the domain names that were being
10 brokered, as confirmed by WHOIS records; (iii) a sophisticated and completely
11 fraudulent online website that posed as an escrow service; (iv) a fraudulent identity
12 verification from the legitimate Escrow.com; and (v) the bitcoin blockchain to
13 receive the ill-gotten funds.

14 VPN is not the only victim of this enterprise and racketeering. Dikian has
15 defrauded others with these same methods. Instead of coming forward to properly
16 defend this suit and disclose their true identity, Dikian insists on hiding behind the
17 fake Dikian identity while at the same time instituting a smear campaign against
18 VPN and its principles who are not choosing to hide like Dikian.

19 **Dikian's Statement:**

20 If Plaintiff was defrauded at all, then it was by an imposter using Dikian's
21 reputation. Dikian is a well-known domain name owner and reseller, as Plaintiff
22 alleges. But, Dikian never agreed to any transaction with Plaintiff involving
23 Intermediar, bitcoin, Escrow.com, or otherwise. Dikian has never transacted
24 through Intermediar, and has never owned bitcoin or transacted in bitcoin.
25 Plaintiff is using this lawsuit, and this Court, in an attempt to extort money from
26 another victim of this purported fraud – Dikian – whose reputation is now smeared
27 by this ill-advised lawsuit. Indeed, Plaintiff now states in this public filing that
28 “Dikian has defrauded others with these same methods” – but Plaintiff makes no

1 such allegation in its Complaint, and has produced no evidence to support it. It is
2 just another smear.

3 Based upon the admissions in Plaintiff's Complaint, it is Plaintiff that has
4 unclean hands. As Plaintiff attempted to engineer its own fraudulent domain name
5 transaction, by which Plaintiff hoped to extract a \$2,150,000 "commission" –
6 nearly 100% of the purported sales price -- as an undisclosed dual agent for both
7 parties to the fictional transaction. Dikian has never and would never agree to any
8 transaction proposed by a dual agent disclosing a nearly 100% commission on the
9 sales price. Indeed, no sophisticated domain name investor would ever agree to
10 such a deal, as any commissions on such a deal would never exceed 15%. More
11 fundamentally, Plaintiff could never be entitled to any commission at all, because
12 no transaction was ever agreed or completed. Brokers do not earn commissions on
13 deals that do not complete.

14 In any event, Plaintiff was reckless in succumbing to the alleged scam, and
15 that was the sole cause of Plaintiff's alleged damage. The purported "escrow
16 service" Intermediar.com was an obvious fraud that could never be trusted in any
17 transaction. Any purportedly professional domain name broker, as Plaintiff
18 purports to be, would never utilize such a new and obviously fraudulent "escrow
19 service" for any significant transaction. Plaintiff was exceptionally greedy and
20 negligent, and now seeks for this Court order -- and for Dikian to pay -- to
21 compensate Plaintiff for the damage that Plaintiff solely caused itself. Dikian had
22 nothing to do with it.

23 **B. SUBJECT MATTER JURISDICTION**

24 Plaintiff alleges that this Court has federal question subject matter
25 jurisdiction pursuant to 28 U.S.C. § 1331 arising from an alleged violation of the
26 RICO statute, 18 U.S.C. §§ 1961. Plaintiff further alleges that this Court also has
27 diversity subject matter jurisdiction pursuant to 28 U.S.C. § 1332.

1 **C. LEGAL ISSUES**

2 **VPN's Statement:**

3 VPN has brought two claims against Dikian for fraud under California state
4 law and for violation of the Federal Civil RICO statute, 18 U.S.C. § 1962(c). In
5 order to succeed on the claims, VPN will need to prove (i) that Dikian's numerous
6 false statements and representations to lure VPN into sending Dikian's enterprise
7 \$250,000 constitutes fraud under California state law, and (ii) that Dikian's pattern
8 of use of the fraudulent online escrow service and the bitcoin blockchain coupled
9 with the multiple predicate acts of fraud and false representations to VPN and
10 others constitutes a violation of 18 U.S.C. § 1962(c).

11 **Dikian's Statement:**

12 Dikian denies that Plaintiff can prove either claim against Dikian, since
13 Dikian had nothing to do with any of the events alleged in Plaintiff's Complaint.
14 Moreover, Dikian has asserted eleven affirmative defenses, including without
15 limitation unclean hands and failure to mitigate damages, as Plaintiff was reckless
16 in attempting to commit its own fraud on two different domain investors – Dikian
17 and Du.

18 **D. PARTIES AND EVIDENCE**

19 **VPN's Statement:**

20 VPN is a Georgia limited liability company with a principal place of
21 business at 378 Aldridge Avenue, Scottdale, GA 30079. VPN's sole members are
22 Michael Gargiulo and Joseph Gargiulo. VPN has in its possession, inter alia, (i) all
23 of the communications between VPN and Dikian, (ii) the fraudulent
24 communications and messages from the fraudulent escrow service, (iii) the
25 communications and verification from the legitimate Escrow.com, and (iv) the
26 information as to the bitcoin transaction.

27 "George Dikian" was believed to be the legal name of Defendant Dikian.
28 Through Dikian's counsel and Dikian's Answer to the Complaint, VPN learned

1 that “George Dikian” is actually a fake identity. VPN has not confirmed the true
2 legal identity of Dikian, and Dikian and counsel have to date refused to disclose
3 Dikian’s true identity.

4 **Dikian’s Statement:**

5 Dikian is the professional alias identity of a well-known domain name
6 investor and reseller. Dikian’s true identity is not relevant to Plaintiff’s claims, and
7 the public disclosure of Dikian’s true identity is likely to cause substantial and
8 unjust damage to Dikian. Dikian had nothing to do with the purported fraud
9 alleged by Plaintiff, and thus should not suffer the damaging public reveal of his
10 true identity. That would only compound the problem that Plaintiff has caused by
11 its own recklessness, and by its ill-advised Complaint -- which smears Dikian’s
12 reputation in the domain name investment and sales community.

13 **E. DAMAGES**

14 **VPN’s Statement:**

15 VPN seeks (i) the \$250,000 that was unambiguously wired to and accepted
16 by Dikian’s enterprise, (ii) VPN’s accrued, unpaid commissions from both domain
17 name transactions, which totals \$6,625,000, and (iii) punitive damages that will
18 deter Dikian from defrauding any further victims.

19 **Dikian’s Statement:**

20 Dikian denies that Plaintiff has been damaged in any way by any act of
21 Dikian, who had nothing to do with any of the events alleged in Plaintiff’s
22 unseemly Complaint. Moreover, Plaintiff’s recklessness, unclean hands and
23 failure to mitigate damages, *inter alia*, precludes any of the relief that Plaintiff
24 seeks from this Court and/or from Dikian.

25 **F. INSURANCE**

26 The parties are unaware of any relevant insurance policies at this time.

27 **G. MOTIONS**

28 **VPN’s Statement:**

1 VPN anticipates the need to file an amended complaint, or, at the very
2 minimum and/or as the Court directs, an amended caption that names Dikian's true
3 identity.

4 VPN also anticipates the need to file a motion to compel disclosure of
5 Dikian's true identity, since, at this time, Dikian has refused to provide such
6 information.

7 **Dikian's Statement:**

8 Dikian's true identity is not relevant to Plaintiff's claims, and the public
9 disclosure of Dikian's true identity is likely to cause substantial and unjust damage
10 to Dikian. Dikian had nothing to do with the purported fraud alleged by Plaintiff,
11 and thus should not suffer the damaging public reveal of their true identity.

12 **H. DISPOSITIVE MOTIONS**

13 Both parties anticipate filing motions for summary judgment.

14 **I. MANUAL FOR COMPLEX LITIGATION**

15 The parties agree that there is no need to utilize the procedures of the
16 Manual for Complex Litigation.

17 **J. STATUS OF DISCOVERY**

18 The parties have started third-party discovery. The parties have agreed to
19 provide each other with initial disclosures by January 31, 2022.

20 **K. DISCOVERY PLAN**

21 All written discovery shall be conducted in accordance with the Federal
22 Rules of Civil Procedure, specifically Rule 26 and Rules 29 through 37, as well as
23 applicable Local Rules and the Orders of this Court. The parties agree to act
24 reasonably in attempting to informally resolve any discovery dispute that may arise
25 and to confer with each other to attempt to resolve any issue in good faith prior to
26 seeking Court intervention.

1 **1. Electronic Service**

2 The parties consent to email service in this matter and agree that—for
3 scheduling purposes—service will be effective on the date the email was received
4 by the designated attorneys, as if made by personal service.

5 **2. Changes to Limitations on Discovery**

6 The Parties agree that no changes are needed to the limitations on discovery
7 imposed by the Federal Rules and Local Rules.

8 **3. Electronically Stored Information**

9 The parties intend to negotiate a protocol for the production of Electronically
10 Stored Information (“ESI Protocol”). That ESI Protocol will address any issues
11 about disclosure, discovery, or preservation of electronically stored information,
12 including the form or forms in which it should be produced. The parties have been
13 advised of their evidence preservation obligations and have taken steps to preserve
14 relevant electronic and other materials. At this time, the parties have no reason to
15 believe there are any issues regarding evidence preservation.

16 **4. Privilege Issues and Protective Order**

17 The parties anticipate that discovery materials will contain certain
18 confidential or proprietary or highly personal information, and thus the parties
19 have been negotiating a protective order to govern discovery.

20 However, the parties have to date been unable to agree on such a protective
21 order. VPN believes a standard clause whereby a party can mark confidential
22 information as it deems necessary should apply. Dikian wishes to have any non-
23 public discovery or information be automatically deemed confidential.

24 With regard to claims of privilege or protection as trial-preparation
25 materials, the parties agree as follows:

26 The party who is claiming privilege shall create a privilege log that will list
27 any documents (or portions thereof) that would otherwise be responsive but are
28 being withheld based upon a claim of privilege. The privilege log should include a

1 brief description of each document (or portion thereof) being withheld sufficient
 2 for the opposing party to assess the privilege claim being asserted, and designate it
 3 with a Bates or other number for identification purposes. The parties will
 4 cooperate to agree on a date to produce their respective privilege logs. The parties
 5 otherwise agree to the provisions stated in Federal Rule of Evidence 502, and agree
 6 that the Protective Order shall include a provision that the inadvertent disclosure of
 7 privileged information shall not constitute a waiver thereof, and shall include a
 8 claw-back provision for the return of inadvertently produced privileged
 9 information.

10 **Discovery to be sought:**

11 The Parties agree that discovery will need to be sought from each other as to
 12 all communications between the parties, as well as from several third parties,
 13 including email service providers, domain name registrars, Escrow.com, and other
 14 third-party witnesses.

15 **L. DISCOVERY CUTOFF**

16 VPN proposed: 7/10/23

17 Dikian proposed: 5/12/23

18 **M. EXPERT DISCOVERY**

19 VPN proposed: 8/3/23

20 Dikian proposed: 6/23/23

21 **N. SETTLEMENT CONFERENCE/ALTERNATIVE DISPUTE**
 22 **RESOLUTION (“ADR”)**

23 The parties have engaged in initial informal settlement discussions, which
 24 were not successful. The Plaintiff would be open to ADR after discovery. Dikian
 25 desires for a Settlement Conference to be held after a round of written discovery
 26 between the parties, and before more expensive depositions are permitted.

O. TRIAL ESTIMATE

The parties have requested a jury trial, and they estimate that trial will last four to five days. The parties estimate that they will each call between four and six witnesses at trial, plus expert witnesses.

P. TRIAL COUNSEL

VPN's lead trial counsel will be Brett Lewis and Mike Cilento of Lewis & Lin LLC in conjunction with Ji-In Lee Houck of Houck Law Firm serving as local counsel.

Dikian's lead trial counsel will be Mike Rodenbaugh of Rodenbaugh Law.

Q. INDEPENDENT EXPERT OR MASTER

The parties do not anticipate a need for an independent expert or master.

R. SCHEDULE WORKSHEET

The Parties have set forth their respective proposed trial dates and pre-trial timetables in the Court's Schedule of Pretrial and Trial Dates Worksheet, which is being submitted concurrently herewith as **Exhibit A**.

S. OTHER ISSUES

VPN's Statement:

The main threshold issue right now is Dikian's refusal to provide Dikian's true legal identity to VPN. Without such disclosure, VPN cannot amend its Complaint or thoroughly seek discovery. Because a motion to compel will likely be required, VPN's proposed dates for amending the Complaint as well as discovery cutoffs are a bit further out than would normally be proposed.

Dikian's Statement:

Dikian's true identity is not relevant to Plaintiff's claims, and the public disclosure of Dikian's true identity is likely to cause substantial and unjust damage to Dikian. Dikian had nothing to do with the purported fraud alleged by Plaintiff, and thus should not suffer the damaging public reveal of his true identity.

1 DATED: JANUARY 27, 2023

BRETT E. LEWIS
MICHAEL D. CILENTO
LEWIS & LIN, LLC

3 JI-IN LEE HOUCK (SBN 280088)
4 HOUCK LAW FIRM

5 By: /s/ Michael D. Cilento
6 Michael D. Cilento (*pro hac vice*)
7 Attorneys for Plaintiff VPN.COM LLC.

8 DATED: JANUARY 27, 2023

MIKE RODENBAUGH
RODENBAUGH LAW

10 By: /s/ Mike Rodenbaugh
11 Mike Rodenbaugh (SBN 179059)
12 Attorneys for Defendant George Dikian

13
14 **Attestation Regarding Signatures**

15 I, Michael D. Cilento, attest that all signatories listed, and on whose behalf
16 the filing is submitted, concur in the filing's content and have authorized the filing.

17
18 DATED: JANUARY 27, 2023

By: /s/ Michael D. Cilento
Michael D. Cilento

JUDGE ANDRÉ BIROTTE JR.
SCHEDULE OF PRETRIAL AND TRIAL DATES WORKSHEET

Please complete this worksheet jointly and file it with your Joint Rule 26(f) Report.

The Court ORDERS the parties to make every effort to agree on dates.

Case No. 2:22-cv-04453-AB-MAR		Case Name: VPN.COM LLC v. GEORGE DIKIAN, et al.		
Trial and Final Pretrial Conference Dates		Pl(s)' Date mm/dd/yyyy	Def(s)' Date mm/dd/yyyy	Court Order mm/dd/yyyy
Check one: <input checked="" type="checkbox"/> Jury Trial or <input type="checkbox"/> Court Trial (Tuesday at 8:30 a.m., within 18 months after Complaint filed) Estimated Duration: <u>4-5</u> Days		11/7/23	11/7/23	<input type="checkbox"/> Jury Trial <input type="checkbox"/> Court Trial _____ Days
Final Pretrial Conference ("FPTC") [L.R. 16], Hearing on Motions In Limine (Friday at 11:00 a.m., at least 17 days before trial)		10/20/23	10/20/23	
Event ¹ Note: Hearings shall be on Fridays at 10:00 a.m. Other dates can be any day of the week.		Weeks Before FPTC	Pl(s)' Date mm/dd/yyyy	Def(s)' Date mm/dd/yyyy
Last Date to Hear Motion to Amend Pleadings /Add Parties [Friday]			5/24/23	3/24/23
Non-Expert Discovery Cut-Off (no later than deadline for <u>filing</u> dispositive motion)		17	7/10/23	5/12/23
Expert Disclosure (Initial)			6/3/23	5/19/23
Expert Disclosure (Rebuttal)			7/3/23	6/9/23
Expert Discovery Cut-Off		12 ²	8/3/23	6/23/23
Last Date to Hear Motions [Friday] • Rule 56 Motion due at least 5 weeks before hearing • Opposition due 2 weeks after Motion is filed • Reply due 1 week after Opposition is filed		12	8/28/23	7/28/23
Deadline to Complete Settlement Conference [L.R. 16-15] <u>Select one:</u> <input checked="" type="checkbox"/> 1. Magistrate Judge (with Court approval) <input type="checkbox"/> 2. Court's Mediation Panel <input type="checkbox"/> 3. Private Mediation		10	8/07/23	4/21/23
Trial Filings (first round) • Motions In Limine • Memoranda of Contentions of Fact and Law [L.R. 16-4] • Witness Lists [L.R. 16-5] • Joint Exhibit List [L.R. 16-6.1] • Joint Status Report Regarding Settlement • Proposed Findings of Fact and Conclusions of Law [L.R. 52] (court trial only) • Declarations containing Direct Testimony, if ordered (court trial only)		3	10/16/23	9/29/23
Trial Filings (second round) • Oppositions to Motions In Limine • Joint Proposed Final Pretrial Conference Order [L.R. 16-7] • Joint/Agreed Proposed Jury Instructions (jury trial only) • Disputed Proposed Jury Instructions (jury trial only) • Joint Proposed Verdict Forms (jury trial only) • Joint Proposed Statement of the Case (jury trial only) • Proposed Additional Voir Dire Questions, if any (jury trial only) • Evidentiary Objections to Decls. of Direct Testimony (court trial only)		2	10/23/23	10/6/23

¹ The parties may seek dates for additional events by filing a separate Stipulation and Proposed Order. **Class actions and patent and ERISA cases in particular may need to vary from the above.**

² The parties may wish to consider cutting off expert discovery prior to the deadline for **filing** an MSJ.